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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GORDON DOUGLAS RAMSEY,

Defendant and Appellant.

A096935

(Sonoma County
Super. Ct. No. SCR30843)

Defendant Gordon Ramsey pleaded guilty to the involuntary manslaughter of his friend Jaime Aldeman,¹ which occurred when defendant pulled the trigger of a gun that he believed was not loaded. Ramsey appeals from the imposition of a four-year sentence enhancement for personal use of a firearm in the commission of a felony. We conclude that the enhancement was properly added to his sentence, and therefore affirm.

BACKGROUND

The evidence presented at the court trial on the sentence enhancement established the following facts. Ramsey lived with Aldeman near Sebastopol. On March 28, 2001, Scott Cameron, a mutual friend, stopped by around 4:30 in the afternoon. Cameron and Aldeman were drinking beer about a half an hour later when Ramsey returned home. The three loaded some split wood into the back of a truck to trade for food at a local

¹ Mr. Aldeman is referred to in various places throughout the record and the briefs as “Jamie Adelman.” However, the victim’s name appears to be “Jaime Aldeman” according to his mother’s testimony at sentencing.

restaurant, and Ramsey and Cameron drove to the restaurant. At approximately 6:30 p.m., they returned to the house with the food. Aldeman came out of the house for his food, and they all started to return towards the house. Before they entered the house, however, Ramsey took his gun out of his car because he was planning to take some practice shots in a nearby field. A short while later, Cameron returned to his truck and Aldeman followed him out and stood by the truck talking to him. Ramsey went outside to put his gun away, as he realized it was too dark to shoot it. He joined Cameron and Aldeman by the truck. When there was a pause in the conversation, he pulled out his gun to “dry fire” it, so that he could take it apart and show it to his friends. When he pulled the gun out, he testified, he “lifted [it] up to dry fire it and it went off.” Cameron saw a flash, heard a “pop” sound and turned to see Aldeman lying dead on the ground.²

There was no evidence that Ramsey and Aldeman had argued recently, or that there was any animosity between them. Ramsey obtained his hunter’s safety license when he was 12 years of age, and had been hunting several times. He told the police that he had owned the gun with which he shot Aldeman for approximately two years, and that he had fired it exactly five times previously. He also told the police that he began keeping the gun in the car when he moved in with Ramsey because there were children living in the house and he believed it would be safer to keep the gun in the car, which had an alarm, than in his room in the house.

Ramsey was charged with one count of murder (Pen. Code, § 187 subd. (a))³ and a second count of involuntary manslaughter (§ 192, subd. (b)). Both counts contained allegations that he used a firearm in the commission of the crime within the meaning of section 12022.5, subdivision (a)(1). He ultimately pleaded guilty to involuntary manslaughter and waived a jury trial on the firearm enhancement, and the murder count was dismissed. Following a court trial on the applicability of the firearm enhancement,

² Defendant fled to Mexico after the shooting, but returned to the United States a few days later and was arrested at the border.

³ All statutory references are to the Penal Code.

the trial court found that it did apply and imposed a four-year term for the manslaughter plus a four-year enhancement for use of a firearm. Defendant has timely appealed.

DISCUSSION

At the time of sentencing, section 12022.5, subdivision (a)(1) provided that “any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.”⁴ “The intent of the enhancement provision is to ‘ “deter persons from creating a potential for death or injury resulting from the very presence of a firearm at the scene of a crime” ’ [citation], and to ‘ “deter the use of firearms in the commission of violent crimes by prescribing additional punishment for each use.” ’ [Citation.] . . . ‘[T]he term “use” . . . should be broadly construed, consistent with common usage, to check the magnified risk of serious injury which accompanies any deployment of a gun in a criminal endeavor.’ [Citation.]” (*In re Tameka C.* (2000) 22 Cal.4th 190, 196.)

Ramsey pleaded guilty to involuntary manslaughter, but argues that the trial court erred in imposing the enhancement because he did not intentionally fire the gun. Involuntary manslaughter consists of the unlawful killing of a human being “in the commission of a lawful act which might produce death . . . without due caution and circumspection.” (§ 192, subd. (b).) “[O]ne cannot be found liable under [section 192] unless criminal negligence is shown.” (*People v. Velez* (1983) 144 Cal.App.3d 558, 565.) “The handling of firearms calls for a high degree of care, and criminal negligence is frequently found in the unintended killing by a gun. The negligence may consist of

⁴ Section 12022.5 was amended in 2002 to read: “any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.”

pointing it without looking to see if it is loaded, or handling and shooting it in a place where it is likely to injure another.” (1 Witkin, Cal. Criminal Law (3d ed. 2000) Crimes Against the Person, § 228, p. 839.) In *Velez, supra*, the defendant was charged with involuntary manslaughter after he accidentally shot a coworker. The defendant had cleared the chamber of his gun and replaced the magazine, and believed that there was no bullet in the chamber when he pointed it at the victim and the weapon discharged. (144 Cal.App.3d at p. 562.) The defendant argued that the trial court erred in refusing to instruct that a reasonable mistake of fact may negate criminal intent. In affirming, the appellate court held that “[i]n order to be guilty of involuntary manslaughter (i.e., criminal negligence) under the facts of this case, it was only necessary for appellant to fail to perceive the risk of pointing a potentially hazardous weapon at [the victim].”

Similarly in this case, Ramsey failed to perceive the risk of pointing his gun at Aldeman. He argues that the enhancement for the use of a firearm in the commission of a felony requires that the use be intentional, and that since he did not intend to discharge the weapon the enhancement could not be found to apply. Defendant is correct in his major premise: “use” of a firearm within the meaning of section 12022.5, subdivision (a) requires conduct that “must be done intentionally.” (*People v. Johnson* (1995) 38 Cal.App.4th 1315, 1320; *In re Tameka C., supra*, 22 Cal.4th at p. 197.) However, defendant’s argument incorrectly assumes that the necessary intent is to fire the weapon. But, all that is necessary is the intent to use the weapon. As indicated above, intentionally pulling the trigger is sufficient to establish intentional use, even if one mistakenly believes the gun is not loaded and thus does not intend to fire it. This interpretation of section 12022.5 comports with the deterrent purpose of the firearm enhancement. “The desire of the Legislature to prevent death and injury as a result of the involvement of firearms in the commission of crime is manifest from the various provisions for increased punishment for crimes where firearms are in some way involved. The underlying intent of the Legislature is to deter persons from creating a potential for death or injury resulting from the very presence of a firearm at the scene of a crime.” (*People v. Reaves* (1974) 42 Cal.App.3d 852, 856.)

Admittedly there is a certain anomaly in seeking to deter an individual from using a firearm in connection with a crime he or she does not intend to commit. Yet, the Legislature has made involuntary manslaughter a felony, and has imposed an additional penalty for using a firearm in connection with the commission of any felony. The objective of deterrence is furthered if individuals are encouraged to take precautions to ensure that they are not criminally negligent whenever they handle a firearm, lest they be subject to the increased consequences imposed by section 12022.5, subdivision (a).

DISPOSITION

The judgment is affirmed.

Pollak, J.

We concur:

Corrigan, Acting P. J.

Parrilli, J.